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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 717

ROSE K. JOYCE,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, a Body Politic and Corporate

---

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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BRIEF.

Jurisdiction to Review.

The judgment here sought to have reviewed became final in the Appellate Court of Illinois for the First District thereof when the Supreme Court of that State on September 12, 1945, denied leave to appeal. By subsequent orders this Court extended the time to file petition for certiorari herein to January 5, 1946.

The jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code, 43 Stat. 927, U. S. C. A., Sec. 344 (b).

Opinion, where found.

The opinion of the Appellate Court of Illinois, First District, is reported as *Joyce* v. *Board of Education*, 325 Ill. App. 543, and appears at Abstract page 152.

The Applicable Statute of Illinois.

The applicable school laws of Illinois provide that a teacher, after serving a probationary period of three years, may not be arbitrarily discharged, but can be dismissed only for cause. The law (Ill. Rev. Stat. Ch. 122, Par. 186, Sec. 161) is as follows:

> "No teacher or principal who has or shall be appointed by said board of education shall (after serving the probationary period of three years specified in Section 138 of this act) be removed except for cause, and then only by a vote of not less than a majority of all members of the board, upon written charges presented by the Superintendent of Schools, to be heard by the board, or a duly authorized committee of the same, after thirty days notice, with copy of the charges, is served upon the person against whom they are preferred, who shall have the privilege of being present, together with counsel, offering evidence and making defense thereto. At the request of any party such hearing shall be public. The action and decision of the board in the matter shall be final. Pending the hearing of such charges the person may be suspended as by the rules of the board may be prescribed: Provided, however, that in the event of acquittal such person shall not suffer any loss of salary by reason of the suspension."

STATEMENT.

This petition asks this Court to review the record of dismissal of a talented and efficient High School teacher of history made upon charges of controversial statements involving the war in the emotional period following the Pearl Harbor attack and the declaration of war.

Class room comments on history made on Monday, December 8, 1941 were the basis of one charge against petitioner.

A private letter written by petitioner about six weeks later to one of her former pupils congratulating him upon certain remarks he was said to have made about war, characterized it as a "courageous and idealistic stand" on the war situation (not publicized by either petitioner or her pupil, but intercepted by the F. B. I., and later publicized), formed the basis of the second charge.

The Board of Education based its order of dismissal on both charges, but the Appellate Court of Illinois made no finding as to the class room statements, remarking that the testimony of the students conflicted, and stating that in view of the Court's conclusion that the character of the letter to petitioner's former pupil "constituted cause for her dismissal," the Court did not "decide whether the findings (of the Board) in respect thereto are sustained by the record." (Abst. 159).

Observing a news article in a morning paper concerning statements that David Nyvall, one of her former pupils, had made concerning war and that David was under arrest for failing to register on February 16, 1942, petitioner wrote the controversial note to her former pupil, stating:

> "Dear David: Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation; war, which in reality is mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce." (Abst. 60).

This letter was sent by U. S. mail addressed to Nyvall personally at his home address. It was intercepted by the F. B. I. and given to David's father who lived at a different address. There is no evidence that David ever saw the letter.

On the trial of the charges the letter was produced by the Superintendent of Schools.

Who publicized the letter was not shown by the Superintendent of Schools on the trial nor how it happened to reach the notice of the press, but the letter was produced by the Superintendent of Schools at the trial.

About ten days after its date a newspaper reporter called on petitioner while she was teaching at school and asked her if she had written a letter to Nyvall and questioned her about it. On the following day papers carried a story about the letter and immediately following that publicity, petitioner was suspended by the Superintendent of Schools on general grounds of conduct unbecoming a teacher; later the charges on which she was tried were filed as to the letter, and as to the statements made by petitioner in her history classes the day after Pearl Harbor.

The news article as it appeared in some city papers was so written as to convey the impression that the congratulations were upon the refusal of Nyvall to register. One

paper, however, gave an interpretation closer to the fact and said that the congratulations were on the display by Nyvall of his convictions (Abst. 127).

Petitioner's Record as a Teacher was Excellent through the years.

Petitioner graduated from Hyde Park High School in 1921; attended the University of Chicago until 1924; in Chicago Normal College to June 1925; commenced teaching in elementary grades in 1926; in 1932 began high school teaching at Marshall High School; in 1935 went to Hyde Park High School, where she taught history until suspended in February 1942 (Abst. 91). The school records of her teaching show that for the first year her services were "Satisfactory" and from 1927 to and including 1942 the record in each year shows "Excellent" (Abst. 88-89). In 1936, on sabatical leave, petitioner took a course at Loyola University where she was given a master's degree (Abst. 91).

In June 1941 the Superintendent of Schools wrote petitioner a letter congratulating her upon her teaching methods and thoroughness and stating, among other complimentary remarks, "You are not only instructing your students you are inspiring them." (Abst. 92).

ERRORS TO BE ARGUED.

The Board of Education erred in sustaining the order of suspension made by the Superintendent of Schools and in dismissing petitioner from the service.

The complaint did not show any cause for dismissal of petitioner and the action taken by the Board of Education under it deprived petitioner of her property right in her status as a teacher without due process of law.

The action of the Board of Education was taken in violation of petitioner's constitutional right to freedom of speech.

Petitioner's right under the First and Fourteenth Amendments to freedom of speech and due process of law were violated by the orders and judgments of the Board of Education, the Circuit Court of Cook County, and the Appellate Court of Illinois.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Illinois statutes make school teaching a career and after three years of successful probation a teacher attains a status that can only be destroyed for legal cause; and it is contended that the causes alleged for dismissal of petitioner have no substance in fact and furnish no justification, and the evidence adds nothig, but detracts therefrom; that the statements attributed to petitioner are protected by the constitutional provisions guaranteeing freedom of speech and due process of law.

The judgment of the Appellate Court of Illinois is challenged upon the ground that it destroys the teaching career of petitioner upon a charge so lacking in evidentiary support as to deny to petitioner her constitutional right to freedom of speech and to have due process of law.

ARGUMENT.

I.

The innuendo contained in the charge made, that the Nyvall letter congratulated him upon his refusal to register for Selective Service is a distortion of its plain and obvious meaning.

The innuendo contained in the charge made against petitioner in the writing of the Nyvall letter is that she was guilty of seditious utterances. The Superintendent of Schools did not put it in so many words but the cross examination of petitioner conducted by its counsel (Abst. 106-125) shows that that was the objective of the trial.

The findings of the Board of Education are not expressed in the language of sedition but that is the innuendo of its findings.

The Appellate Court of Illinois, however, pointedly says that petitioner encouraged Nyvall to violate the law and wished him success in his efforts to refuse to register, which in effect says the letter was a seditious utterance.

But if this record is thoughtfully read it is seen that a letter of sympathy to a former student was first construed by news reporters to be seditious and from there on it rolled up like a snow ball gathering additional odiom as it legally progressed.

If the letter is put in its proper setting and traced through from its writing to the Appellate Court opinion we will see that the impetus given the deductions of the news reporters carried through to the end.

The charge as to the writing of the Nyvall letter was that petitioner was "guilty of conduct unbecoming a teacher of the Chicago Public Schools for the following reasons:

> "2. That she wrote a letter to a former student of hers who failed to register in accordance with the Selective Service Proclamation of the President of the United States, congratulating him on his 'courageous and idealistic stand.'" (Abst. 21),

which is a distortion of the plain language of the letter. The letter contains no such innuendo. The letter says:

> "Allow me to congratulate you on the courageous stand you have taken on the *war situation; war which in reality is mass murder* * * *." (Abst. 59). (Italics ours.)

The letter clearly shows that the reference was to what was said by Nyvall about war generally and not about the Selective Service. The letter, upon its face, as is to be seen, bears no such interpretation. The letter refers to the stand taken on the "war situation; war, which in reality is mass murder."

Petition explains her letter.

There was no testimony given to interpret, or explain the meanings of the expressions in the letter, beyond that given by petitioner herself who was called by the Superintendent of Schools as a witness against herself, and as his own witness. Under his examination before the Board committee petitioner stated that she did not congratulate Nyvall upon his refusal to register, but upon his courage in standing up for what he thought was right, his courage, and his idealistic views (Abst. 59, 118, 126).

The findings of the Board follow the distortions in the charge.

The findings of the Board of Education however did not follow the evidence given in explanation but adopted the innuendo, without directly so saying, that is, that the letter congratuated Nyvall on his failure to register and that petitioner wrote the letter for that purpose nowithstanding her knowledge of the provisions of the Selective Service Act. The finding distorts the letter and contradicts the evidence.

The Opinion of the Appellate Court exaggerates the prior distortion, and develops the innuendo into a statement of fact.

The opinion of the Appellate Court expands the distortion of the Nyvall letter and says that petitioner was familiar with the Act and knew Nyvall was required to Register on February 16, yet:

> "Nevertheless she congratulated him on what she described as a 'courageous and idealistic stand,' thus encouraging him to violate the law and wished him success in his efforts to refuse to register, expressing the sentiment that other boys 'who take the same stand are the hope of America.' She should have seen that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation whom she was inviting and encouraging to violate the law." (Abst. 158).

The Appellate Court states in its opinion as a fact that David Nyvall "publicly announced that he would refuse to register on the day fixed by the President's proclamation," (Abst. 158), but no such statement attributed to Nyvall appears in the record.

The Appellate Court then on that conception of the evidence, gave it as its opinion that the Board of Education was:

> "Justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools and having jurisdiction of plaintiff as an employe of the Board it had the right to determine whether her conduct constituted cause for dismissal." (Abst. 158).

Noting that petitioner was contending that the constitutional right to freedom of speech protected her in the writing of the letter, the Appellate Court answered:

> "Plaintiff (petitioner) takes the position that being a citizen as well as a teacher, she was entitled to freedom of speech and therefore it was perfectly proper for her to write the letter as well as make the statements attributed to her by her students which the committee found as an additional justifiable cause for dismissal." (Abst. 158.)

Guilt was assumed, not proven.

The Appellate Court of Illinois, therefore, read into the letter words, statements and sentiments not found in the record, which are contrary to the record, and in opposition to most reasonable interpretations of the letter, and logical explanations of its contents by petitioner; which explanations and meanings were introduced by the Superintendent of Schools himself, supposedly in support of his charges against petitioner, but which in fact support petitioner's contentions.

And so we see a letter of sympathy from a teacher to her former pupil, in words congratulating him upon an idealistic stand which he was said to have taken upon war, growing from an honest thought crescendo, as it passed from one tribunal to another, until finally construed to be

sedition itself, and the writer condemned as unworthy to pursue the career she has so honorably established, and worthily pursued.

The charge is so lacking in substance and the letter so distorted in construction that the judgment based upon it cannot be said to be the product of due process of law.

The expression of an honest thought, opinion or speech, cannot, by such distortion, be carried beyond the protection of the First Amendment so as to destroy the right of petitioner to pursue her chosen career.

Due process requires substance in a charge.

The Illinois Statute contemplates that the charge against a teacher should show a valid cause, *i. e.*, it should state facts from which it may be seen that cause for dismissal exists. Inasmuch as the charges here involved the right of freedom of speech and to have due process of law there must be here more than mere sufficiency of form, there must be accompanying substance.

Due process of law presupposes a real issue to be decided, a legal charge made, a fair trial and a calm judgment. Due process contemplates a trial that does not reflect war fever, prejudice and hysteria.

It is now settled that the due process clause of the Fourteenth Amendment applies to the protection of freedom of speech guaranteed by the ~~Fifth~~ First Amendment as against state action. (*Whitney* v. *California*, 274 U. S. 357, 373; *Douglas* v. *Jeannette*,, 319 U. S. 157, 162; *Jamison* v. *U. S.*, 318, U. S. 413, 414).

The legal situation here is parallel to that in *Hartzel* v. *U. S.*, 322 U. S. 680, where it appeared that Hartzel was charged with writing certain articles with seditious intent and where the government made no proof other than the face of the documents which did not contain any reference to recruiting, enlistment or draft whatever. There it was held the charge was not proven by the face of the documents only.

Here the Nyvall letter has no reference to registration and the evidence negatives any innuendo that it did have.

II.

The action of the Board of Education destroyed the teaching career of petitioner in violation of her rights to due process and freedom of speech.

School teaching was a life's career to petitioner, Rose K. Joyce.

As Rose S. Kelly, petitioner graduated from Hyde Park High School in 1921, studied four years at the University of Chicago, one year at Chicago Normal College and a year on sabatical leave at Loyola University. In 1936 she was married and continued her career as Rose K. Joyce.

Petitioner commenced teaching in elementary classes in 1926. From 1927 to and including her suspension her record is marked "Excellent." (Abst. 89). Only a few months prior to her suspension the Superintendent of Schools wrote her a letter, carbons of which were sent to the District Superintendent, and to the principal of the Hyde Park High School, highly complimenting her upon her work.

This highly successful career was destroyed effectually by the action of the Board of Education, and the action of the Circuit and Appellate Courts.

The charge was not proven.

The Appellate Court obviously concluded that the statements made by petitioner in class room discussions as a teacher of history were not to be questioned where made in her character as teacher, and chose to put their judgment upon the letter writing charge. We thereupon give specific attention to the Nyvall letter charge.

The Nyvall letter was a private communication, not a public statement. It was not publicized by the pupil to whom addressed. For that reason the charge must be limited to such reflection as that letter casts upon the character of the petitioner. There is nothing else in the record that reflects upon her ability, character, patriotism or loyalty to her native country, or its institutions.

There is an innocent interpretation to the Nyvall Letter.

There is an entirely innocent interpretation to be put upon the Nyvall letter, and the familiar rule is that, where conduct is susceptible of two interpretations the innocent one is to be taken. The presumption prevails that conduct is innocent. The whole logic of the situation is that the subject of petitioner's letter was war. The article in which Nyvall was quoted was not produced by the Superintendent of schools but the statements made about it show that *War* was the subject matter and not registration for service in war. Under cross examination petitioner said:

> "I understood that's what the boy believed war was—as I said in my letter—'war, which is in reality mass murder.' I think his stand in believing that war

> was mass murder is idealistic. He might have gotten these idealistic tendencies from Becker's Modern Hisory, if he took modern history at Hyde Park. Becker expressed such ideas." (Abst. 119.)

If two constructions could be given to this letter the fact that one has the atmosphere and ring of innocence requires that it be so construed.

There is nothing in the letter that points to any unfitness, or immorality, disloyalty to her country, or lack of proper appreciation of petitioner's status as a High School teacher, which can be held to be a cause for dismissal from service and destruction of petitioner's career.

It is clear that petitioner had a right to write the letter in question to her former pupil. When properly understood it had an innocent aspect, and did not constitute cause for dismissal from service.

To make a letter cause for dismissal from service it would have to evidence such moral turpitude, disgraceful conduct, or mental condition as to destroy the right to teach.

The long and honorable service, deemed excellent upon the records, and personally complimented by the Superintendent of Schools, far outweighs the distorted construction put upon the letter.

The First Amendment to the Federal Constitution as well as the Fourteenth give protection to petitioner's rights to freedom of speech and due process of law which she here invokes.

III.

There was no legal cause for dismissal of petitioner from service.

Cause for dismissal of a teacher who has that status under the Illinois Statute must be something substantial affecting the competency, qualification or character of petitioner that would render her an unfit person to continue as a public school teacher.

Here the only thing shown against petitioner is a letter congratulating a former pupil upon his viewpoint as to war. It was private. It was not publicized by petitioner but by some unauthorized person. It has an innocent interpretation to the benefit of which petitioner was entitled but to which she was not accorded.

The long, honorable and excellent service rendered, plus the innocent construction to be placed upon the letter, was a sufficient answer to the charges; and they should have been dismissed.

Cause for removal must be good in law and fact.

Cause for removal from office is said to be something detrimental to the discipline and efficiency of the service or which law and sound public policy recognize as good cause for no longer occupying the position. (*Murphy* v. *Houston*, 259 Ill. App. 385.)

Cause for removal is some personal conduct, or fact, rendering incumbent's further tenure harmful to public interest. (*State* v. *Kansas City*, 257 S. W. 197, 200.)

Where an officer holds for a fixed term, and is removable for cause only, it is essential to a valid removal that the

charges be legally sufficient. (*Smith* v. *Board of Education*, 264 Ky. 150, 157.)

In 22 R. C. L. p. 571, sec. 822, the rule is stated as follows:

> "The word cause in a statute authorizing the removal of officers for cause means legal cause and not any cause which the board authorized to make such removal may deem sufficient. It is implied that they cannot be removed at mere will of those vested with power of removal or without any cause. It must be a cause relating to and affecting the administration of the office and must be restricted to something of a substantial nature directly affecting the rights of the public."

The charges as made stated no facts and the proofs made supplied no facts evidentiary of any guilt or of any disqualifying nature.

IV.

War hysteria is responsible for the charges against petitioner.

It can be seen from a casual view of this record that the fever of war was running high when this case was heard. The long cross examination of petitioner as to her ideas and beliefs is evidence of the attitude of the Board members (Abst. 106-125). The pictures run in the public press and the distorted constructions put upon the Nyvall letter, and those of petitioner in explanation, reflect the attitude of intolerance of the Board, the press and public to any conservative views. The view of the Appellate Court is that the fact that such a letter was written, however innocent petitioner's intentions may have been, is sufficient cause for dismissal.

The fact is that the letter was only expressing the then prevailing, and the present existing, idea of millions concerning war and which now the society of the world is seeking to outlaw, and for which the men who started that unprovoked war are now being tried and executed for their mass murders.

Current history is being made around the world upon the theory that wholesale slaughter of human beings in racketeering wars are mass murders. Deaths caused by defensive warfare may not merit the legal phrase of murder, but the pawns of war are entitled to speak their own viewpoint under our type of government and our Constitution, without being imprisoned or deprived of their property for so doing.

But when the excitement of war is on the rule is to classify any conservative thought as seditious.

Here current opinion and war ideas are responsible for the dismissal of petitioner in violation of the basic rights guaranteed by the First and Fourteenth Amendments and this Court should take the case to protect those rights.

Conclusion.

It is therefore respectfully suggested that the questions here urged are not idle, nor frivolous, but substantial; that the action of the Board of Education of Chicago and the Circuit and Appellate Courts of Illinois affirming that action have operated to deprive petitioner of her career as a teacher in violation of her constitutional right of freedom of speech and without a substantial charge against her, so that she has been deprived of her career without due process of law.

Wherefore it is respectfully suggested that in the interests of justice, the Writ of Certiorari should be granted as prayed.

Respectfully submitted,

Ode L. Rankin,
Maximilian J. St. George,
Counsel for Petitioner.

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JAN 26 1948

Supreme Court of the United States

October Term, A. D. 1947

No. [redacted]

[redacted]

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CHICAGO, a Body Politic [redacted]

Respondent.

STATEMENT [redacted]
AND [redacted]
IN [redacted]
[redacted]

[redacted]

Petitioner,
[redacted]
Attorney for Petitioner.

Of Counsel:
[redacted]
[redacted]

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Respondent.

STATEMENT BY RESPONDENT OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE THE COURT:

Respondent, Board of Education of the City of Chicago, a body politic and corporate, respectfully presents to the Court the following matters and grounds making against the jurisdiction of the Supreme Court of the United States of the petition of Rose K. Joyce for a writ of certiorari directing the Appellate Court of Illinois, First District,

Chicago, Illinois, to certify to this Court the record in the case of *Rose K. Joyce* v. *Board of Education of the City of Chicago,* to review the decision of the Board of Education of the City of Chicago, the Circuit Court of Cook County, and the judgment affirming the same by the Appellate Court of Illinois, First District.

STATEMENT OF THE CASE.

The proceeding with reference to which certiorari is sought was a complaint filed August 14, 1942 in the Circuit Court of Cook County, Illinois, against the Board of Education of the City of Chicago, wherein Rose K. Joyce sought a writ of certiorari to review an order of the Board of Education of the City of Chicago removing her as a teacher in the public schools of Chicago where she taught history after a full hearing upon charges filed against her by the Superintendent of Schools (R. 129-134).

Petitioner was found guilty by the Board of Education of conduct unbecoming a school teacher in the public schools of Chicago in that she made un-American statements in her classroom derogatory to the United States government, stating in her classroom (1) that the United States had the attack on Pearl Harbor coming to it, (2) that Japan had every right to declare war on the United States, (3) that the United States was wrong in limiting immigration of the Japanese, (4) that the Japanese should be permitted to become American citizens, (5) that the United States was wrong in declaring war on Japan, (6) that the government was wrong in its attitude toward Japan, (7) that the government was wrong in its attitude toward war, (8) that Hitler was attempting to establish a democracy in Europe and that the United States and Great Britain were trying to prevent it, (9) that the

United States was always trying to put something over on other countries, and (10) that Stephen Decatur's toast, "My country! in her intercourse with foreign nations, may she always be right; but my Country, right or wrong" is wrong and dangerous and that the students should not believe in it or follow it (R. 133).

Petitioner also was found guilty of conduct unbecoming a school teacher in that she wrote a letter to a former student on February 17, 1942, the day following the former student's failure and refusal to register in accordance with the Selective Service Proclamation of the President of the United States and the provisions of the Selective Service Act, congratulating him on his "courageous and idealistic stand" and wishing him success, and stating that "you and others who take the same stand are the hope of America," notwithstanding that she knew that all male persons between the ages of 20 and 45 who had not previously registered were required under the law and proclamation to register (R. 132).

Petitioner in her brief in support of her petition for writ of certiorari, under the heading "Statement" (p. 3), and under the heading "Petitioner's Record as a Teacher" (p. 5), attempts to inject into the litigation questions wholly unrelated to the charges filed against her. No question of educational qualifications of petitioner was involved in the lower tribunal, nor was it in issue in the trial court or in the Appellate Court. The matter of petitioner's educational background is wholly unrelated to the charges filed against her.

The question presented to the State courts was whether there was any evidence in the record to sustain the charge that this petitioner was guilty of conduct unbecoming a teacher.

The statute pertaining to the Board of Education of the City of Chicago provides for the procedure to be followed in connection with the removal of a teacher who had served her probationary period of three years (Ill. Rev. Stats., 1941, Ch. 122, Par. 186, Sec. 161). (R. 3-4)

The trial court after examining the record in this cause found that the Board of Education had jurisdiction, that the Board's findings were based on substantial evidence and showed cause for removal, and that the Board proceeded legally and in accordance with the essential requirements of the statute for the removal of teachers on charges preferred against them, and dismissed the writ of certiorari (R. 146). This action of the trial court was affirmed by the Appellate Court of Cook County, First District (R. 151). Petition for leave to appeal denied by the Supreme Court of Illinois September 12, 1945. The only contention now made by petitioner is that the acts complained of did not constitute cause for dismissal, and that because of the First and Fourteenth Amendments to the Constitution she had a right as a teacher to make the statements which we have heretofore enumerated to her students in her classroom and that her actions in commending a former student in refusing to register for the draft in February, 1942 as required by law and in making statements to the press publicizing her commendation of such position were proper. She asserts that the Board's action in dismissing her as a teacher under such circumstances deprived her of a property right in her status as a teacher and her constitutional right to freedom of speech.

In her statement she now characterizes the letter as a "private" one to a former pupil, merely congratulating him upon certain remarks he made about the war, characterized his actions as a "courageous and idealistic stand" on the war situation, and claiming that neither she nor the pupil publicized it.

The record in this case does not support such statement, for she testified, "I knew he was in trouble because he did not register. I knew that conscientious objectors, after their registration, had a right under the law that they were conscientious objectors. Yet I wrote him, 'Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation'" (R. 118); "I believe a letter from a teacher to a former pupil who refused to register under the Selective Service Act was doing everything she could to win the war" (R. 120). Similar statements appear at R. 119.

The boy had publicly announced at a prior time that he would not register on February 16, 1942. Petitioner knew that he had refused to register, for she testified, "I just gathered from the newspapers that he had refused to register because he didn't believe in war and that he was a pacifist" (R. 119). She wrote him February 17, 1942, the day following his refusal and failure to register as required by law (R. 59). She granted interviews to newspaper reporters about a week after the letter had been written and told them that she thought the boy had courage in standing up for his convictions and that she congratulated him for having courage to stand up for what he thought was right (R. 126). She read her own statements in about three papers the next day (R. 127). On February 28, 1942, after her statements with regard to her letter appeared in the public press, the Superintendent preferred the charges against her (R. 19-20).

ARGUMENT.

I.

The Board and the Appellate Court of Illinois determined this case upon non-federal grounds adequate to sustain the judgment.

Neither the findings of the Board (R. 131-134) nor the judgment of the Appellate Court (R. 152-159) depend on the decision of any federal question. They are based solely on non-federal grounds.

The Appellate Court states the issue presented by the record thus (*Joyce* v. *Board of Education*, 325 Ill. App. 543):

> "Although plaintiff urges nine separate grounds for reversal, the principal questions presented and stressed on oral argument were: (1) whether the statutory requirements for removal of a teacher were sufficiently followed and complied with; and (2) whether the findings of the general committee that she was guilty of conduct unbecoming a teacher, were supported by the evidence and justified her dismissal for cause" (R. 154).

It is apparent that the Appellate Court in determining the issue was considering merely questions of local law and not federal law and decided the case on non-federal grounds. After reviewing each of the provisions of the statute with reference to removal of teachers (Ill. Rev. Stats. 1941, Ch. 122, Par. 186, Sec. 161), and showing that each provision was strictly complied with, the Appellate Court concluded (R. 156):

"Under the circumstances we are of opinion that

the board proceeded in compliance with the provisions of the law with reference to the removal of a teacher, and that it had jurisdiction of the party and the subject-matter."

The second non-federal ground is thus stated by the court (R. 157):

"The findings of the general committee, which were approved, concurred in and adopted by the board, and which were held to constitute sufficient ground for dismissal, were predicated in part on the letter which plaintiff wrote to a former student about two months after Pearl Harbor, as follows: 'Dear David, Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation—war which is in reality mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce.' Plaintiff argues that this letter did not constitute cause for removal, to which defendants reply that it is for the Board to determine what constitutes cause. In *Murphy* v. *Houston,* 250 Ill. App. 385, Mr. Justice Matchett, speaking for the court, said that it was for the commission to determine what is cause for removal, but that it may not make an arbitrary and unreasonable rule in this respect, and then defined cause to mean 'some substantial shortcoming which renders continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his not longer occupying the place.' The rule as laid down is in harmony with Throop on Public Officers (Book III, ch. XVI), *City of Chicago* v. *Condall,* 124 Ill. App. 64, *Heaney* v. *City of Chicago,* 117 Ill. App. 405, *Joyce* v. *City of Chicago,* 120 Ill. App. 398, affirmed 216 Ill. 466, and *City of Chicago* v. *Gillan,* 124 Ill. App. 210. The question as to who shall determine what constitutes cause has frequently been presented to the court, and the rule to be deduced from the authorities is that where the statute is silent as to what constitutes cause, the right to determine the question is in the tribunal having jurisdiction of

the particular officer or employee. *Kammann* v. *City of Chicago,* 222 Ill. 63; *Murphy* v. *Houston, supra.*"

Petitioner contends that the writing of a letter by her to a former student who refused to register in accordance with the Selective Service Proclamation of the President of the United States issued in accordance with the provisions of the Selective Training and Service Act and in that letter congratulating him on his "courageous and idealistic stand", wishing him success, and stating that "you and others who take the same stand are the hope of America", the contents of which letter were publicized in the daily newspapers of Chicago after the reporters had interviewed petitioner and the making of the statements in her classroom set forth in the findings of the committee, did not constitute cause for removal.

It is the long settled Illinois law that cause for removal is something which the law and sound public opinion recognize as a good cause for the person no longer being permitted to occupy the position or place of employment. *Murphy* v. *Houston,* 250 Ill. 385, 394; *City* v. *Condell,* 124 Ill. App. 63, 73; affirmed 224 Ill. 595; *Heaney* v. *City,* 117 Ill. App. 405, 410; *City* v. *Gillen,* 124 Ill. App. 210, 211; *Joyce* v. *City,* 216 Ill. 466, 470; *Kammann* v. *City,* 222 Ill. 63, 65; Throop on Public Officers, Book III, Chapter XVI.

It is also the long established Illinois law that where the statute is silent as to what constitutes cause, as in the instant case, the right to determine such question is in the tribunal having jurisdiction of the particular officer or employee. *Murphy* v. *Houston,* 250 Ill. App. 385, 394; *Kammann* v. *City of Chicago,* 222 Ill. 63, 65.

II.

Where the determination of a state court is upon non-federal grounds adequate to sustain the judgment, this court has no jurisdiction to review.

It has long been established by the decisions of this Court, commencing with the case of *Klinger* v. *Missouri*, 80 U. S. 257, 263, that even where the state court judgment rests upon two grounds, one of which is federal and the other non-federal in character, this Court's jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment. This rule has been reiterated in a long line of cases since that time, among which are *Arkansas Southern Railroad Co.* v. *German National Bank*, 207 U. S. 270, 275, 276; *Enterprise Irrig. Dist.* v. *Farmers Mut. Canal Co.*, 243 U. S. 157, 164, 165; *Municipal Securities Corpn.* v. *Kansas City*, 246 U. S. 63, 69; *Petrie* v. *Nampa and M. Irrig. Dist.*, 248 U. S. 154, 157; *McCoy* v. *Shaw*, 277 U. S. 302, 303; *Fox Film Corp.* v. *Miller*, 296 U. S. 207, 210.

The Appellate Court in the case at bar examined the law on the local question of whether the Board under the statute had jurisdiction of the party and the subject-matter; whether the statute under which the petitioner was dismissed gave the Board the power to determine what constituted cause for removal; and whether under local law the cause for removal as found by the Board constituted good cause for a teacher no longer being permitted to continue to teach in the public schools of Chicago. The court decided that the Board had jurisdiction, that the Board under the statute had the power to determine cause, that the cause as found was good cause and that there was evidence to support the Board's findings.

The Board's finding and the court's decision rest

squarely upon non-federal grounds which are independent and adequate to support the state court's judgment and therefore the Supreme Court of the United States should decline to take jurisdiction.

III.

The Appellate Court correctly determined the local law and correctly held that the teacher's (petitioner's) conduct constituted cause for dismissal.

The Appellate Court in reviewing the charges against the petitioner and the findings of the Board concluded that her acts constituted cause for removal and that the Board was justified in dismissing her. In this regard it said (R. 157-158):

> "It will be noted, of course, that when the charges were preferred against plaintiff by the superintendent, the United States was engaged in a war with Japan, precipitated by the dastardly acts of that country of December 7, 1941, now commonly referred to as 'Pearl Harbor.' We were not only fighting Japan in the West but engaged in war with Germany and Italy in the East. Loyal Americans approved the action taken by our representatives in Congress on December 8, 1941, declaring war on our enemies, and we all shared the feeling that if the war was to succeed, the support and encouragement of every individual was necessary. Certainly, it was incumbent upon teachers, who mould the minds of the young, to display the proper patriotic attitude. Plaintiff takes the position that being a citizen as well as a teacher, she was entitled to freedom of speech, and therefore it was perfectly proper for her to write the letter as well as to make the statements attributed to her by her students, which the committee found as an additional justifiable cause for dismissal. In answer to this argument defendants point out the commonly known fact that under the Selective Training and Service Act of 1940 it

became the duty of every male citizen of the United States between the ages of 18 and 65 to present himself for and submit to registration in such manner as should be determined by the rules and regulations of the Act; and that by Proclamation of the President, male persons between the ages of 20 and 45 who had not previously registered, were required to do so on February 16, 1942. David Nyvall, a former student of plaintiff, publicly announced that he would refuse to register on the day fixed by the President's proclamation, and on the day after Nyvall was required to register but refused, plaintiff wrote him the letter hereinbefore set forth. She was, of course, familiar with the Act and knew that Nyvall was included among those who were required to register on February 16; nevertheless, she congratulated him on what she described as a 'courageous and idealistic stand,' thus encouraging him to violate the law, and wished him success in his efforts to refuse to register, expressing the sentiment that other boys 'who take the same stand are the hope of America.' She should have foreseen that the incident would provoke public indignation and *that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation whom she was inviting and encouraging to violate the law.* We think the board was fully justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools, and having jurisdiction of plaintiff as an employee of the board, it had the right to determine whether her conduct constituted cause for dismissal." (Italics ours.)

Petitioner here contends that her conduct and the letter she wrote on February 17, 1942 were misconstrued by the press, the Superintendent of Schools, the committee that heard the charges and the defense thereto, the Circuit Court of Cook County, and the Appellate Court of Illinois; that the letter she wrote was distorted; that the findings of the Board followed the distortion in the charge;

that the evidence did not support the conclusions of the Board; and that the Appellate Court exaggerated the alleged distortions. She says her letter was an innocent one of sympathy and was first construed by news reporters to be seditious and from there on it gathered additional odium.

However her actions may be characterized, the fact remains that her actions were such as to require the superintendent of schools, in the discharge of his duties as head of the Chicago public schools, to prefer charges against her as her conduct was such that rendered her continuance in the employment of the Board as a teacher detrimental to the service.

Petitioner tries to minimize the class room conduct of the teacher by stressing the so-called private character of the letter and avoiding the publicity the letter received from her own interviews.

The record with reference to the letter is as follows: under the Selective Training and Service Act of 1940 it was the duty of every male citizen of the United States and every male person residing in the United States who on the day or days fixed for the first and any subsequent registration was between the ages of 18 and 65, to present himself for and submit to registration at such time and place and in such manner and in such age group or groups as should be determined by the rules and regulations provided by the Act (U.S.C.A., Title 50, App. Sec. 302). By Proclamation No. 2535 of the President of the United States, male persons between the ages of 20 and 45 who had not previously registered were required to do so on February 16, 1942.

Nyvall, a former student of petitioner, publicly announced that he would refuse to register on the day fixed

in the President's proclamation. February 17, 1942, the day following Nyvall's refusal to register, petitioner wrote him stating "Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation; war, which is in reality mass murder. I wish you success. You and others who take the same stand are the hope of America. Sincerely, Mrs. Rose K. Joyce" (R. 59-60). Petitioner testified that she was familiar with the Act and knew that all male persons were required to register; knew that all persons who failed to register were subject to punishment (R. 58); that she knew that he was in trouble because he did not register (R. 118); that she knew that conscientious objectors were required to register and after their registration they had certain rights under the law as conscientious objectors. With this knowledge she testified further, "Yet I wrote him 'Allow me to congratulate you on the courageous and idealistic stand you have taken on the war situation'" (R. 118); "I just gathered from the newspaper that he had refused to register because he didn't believe in war and that he was a pacifist" (R. 119). It requires no argument to show how great a damage could be done by a high school teacher with such mental attitude, in charge of boys of draft age at a time when this country was at war. Should a teacher be permitted to remain as a teacher who makes the following statements as to her belief: "I believed that I was doing everything in my power to help win the war by congratulating the boy who refused to register because he has an objection to war. I believe I was doing what I thought was right to win the war" (R. 119). "I believe a letter from a teacher to a former pupil who refused to register under the Selective Service Act was doing everything she could to win the war" (R. 119).

Much publicity had been given in the press to the conduct of Nyvall at that time. The attention of the Superintendent of Schools and the Board was not drawn to this letter until a week after it was written, at which time she granted interviews to newspaper reporters and told them that she had written such a letter to Nyvall (R. 126).

The record in this case clearly supports the conclusions of the Appellate Court with reference to the letter when it held "She should have foreseen that the incident would provoke public indignation and that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation, whom she was inviting and encouraging to violate the law. We think the Board was fully justified in finding that a teacher writing such a letter ought not to be permitted to continue as a teacher in the public schools, and having jurisdiction of plaintiff as an employee of the Board, it had the right to determine whether her conduct constituted cause for dismissal."

In *McDowell* v. *Board of Education*, 172 N. Y. S. 590, 104 Misc. 564, it was held that a teacher who was a Quakeress and opposed to war stated that she did not believe a teacher was under special obligation to train her pupils to support the government in its measures for carrying out the war against the German government, and that court held (p. 592): "It is of the utmost importance to the state that the association of teacher and pupil should tend to inculcate in the latter principles of justice and patriotism and a respect for laws." The court pointed out that her dismissal was not because she was a Quakeress but because it simply had been found that certain views and beliefs which she declared were based upon her religion prevented her from properly discharging the duties she assumed.

Whether the teacher teaches in New York or Chicago, if she is unwilling to cooperate with the constituted authorities and instead encourages a former student to disobey the law and makes statements against the government of her country in her class she should be dismissed.

In *Foreman* v. *School District No. 25,* 81 Ore. 587, 159 Pac. 1155, it was held that a teacher who taught her pupils disloyalty to the government, among other things that the government under which she and they lived is "rotten to the core," constituted good cause for removal.

It is the long established Illinois law that where there is evidence fairly tending to show the guilt of the petitioner the action of the lower tribunal is final and not reviewable on certiorari.

The record filed in this case, and the transcript of evidence taken at the hearing in support of the charges and in defense thereto, clearly show the petitioner was guilty of the charges. The Illinois law is well established that the only purpose of the state court in examining the record is to determine whether there was *any* evidence in the record fairly tending to sustain the order of dismissal. If there is any evidence to sustain the order of dismissal the court will not review the order on the ground that the inferior tribunal wrongfully removed petitioner from her position. *Carroll* v. *Houston,* 341 Ill. 531, 534-536; *Hopkins* v. *Ames,* 344 Ill. 527, 531; *People* v. *Lindblom,* 182 Ill. 241, 244, 5 R. C. L. 265. In the case at bar the overwhelming weight of the evidence introduced supports the finding of the Board that the petitioner was guilty of conduct unbecoming a teacher.

Ten students from various classes of petitioner testified as to the statements made in her classroom (R. 23-56).

While there was some conflict in the testimony there was sufficient testimony in the record to support a finding that she made the statements charged, in her classes. Under the Illinois law the court will not weigh the evidence, for that is not the purpose of the writ of certiorari. The court will examine the record only to determine whether there was any evidence tending to prove the charges made. *Murphy* v. *Houston,* 250 Ill. App. 385, 393.

Respondent has previously discussed the evidence with reference to the letter. The Appellate Court, after a full review of all of the testimony, decided that there was substantial evidence to support the findings and that the Board had jurisdiction of the subject-matter and the parties and that there was cause for removal within the meaning of the state statute (R. 158).

The findings of fact by the state courts will not be reviewed by this court on writ of certiorari.

We have heretofore pointed out that the state courts have held that there was substantial evidence to support the findings of the Board in dismissing the petitioner as a school teacher. Under such circumstances this court has held that the ordinary rule is that question of fact will not be made the subject of inquiry by this Court on writs of error to the state courts or certiorari. Where the findings are concurred in by the state trial and appellate courts this Court will not sit to retry issues of fact thus heard and determined by the properly constituted tribunals of the state having jurisdiction of the subject. *Thomas* v. *Texas,* 212 U. S. 278, 281; *Barrington* v. *Missouri,* 205 U. S. 483, 484-485; *Miller* v. *Guasti,* 226 U. S. 170, 171; *Kerfoot* v. *Farmers and Merchants Bank,* 218 U. S. 281, 288; *Aetna Life Insurance Co.* v. *Dunken,* 266 U. S. 389, 394.

IV.

Dismissal of petitioner as a teacher on the grounds found by the Board and sustained by the state courts does not violate the petitioner's right of freedom of speech guaranteed by our constitution.

It is contended by petitioner that war hysteria was responsible for the charges against and the dismissal of petitioner in violation of her right of free speech guaranteed by the First and Fourteenth Amendments to the Constitution. Her position is that she as a citizen and teacher during war time had the right to make the derogatory and unpatriotic statements in her class, heretofore discussed; to write the letter applauding the stand of her draft dodging former pupil and to publicly announce her endorsement of his stand, because the Constitution guarantees freedom of speech. She cites no authority to support such statement.

This Court has held that when the nation is at war, many things that might be said in peace time are such a hindrance that their utterance will not be endured and no court could regard them as protected by any constitutional right. *United States* v. *Pelley,* 132 F. (2d) 170, certiorari denied, *Pelley* v. *United States,* 318 U. S. 764, rehearing denied 318 U. S. 801; *United States* v. *Brown,* 132 F. (2d) 170, certiorari denied, *Brown* v. *United States,* 318 U. S. 764, rehearing denied 318 U. S. 801; *United States* v. *Fellowship Press,* 132 F. (2d) 170, certiorari denied, *Fellowship Press* v. *United States,* 318 U. S. 764, rehearing denied, 318 U. S. 801.

As pointed out by the Appellate Court in the case at bar, petitioner's former student, Nyvall, publicly announced he would refuse to register February 16, 1942, as

required by the Proclamation of the President. Petitioner was familiar with the requirements of the law and knew Nyvall was among those who were required to register. Nevertheless, February 17, 1942, the day following his failure to register, petitioner wrote him congratulating him on what she described as a "courageous and idealistic stand," thereby encouraging him to violate the law and wishing him success in his efforts, expressing the sentiment that other boys "who take the same stand are the hope of America" (R. 158). Then a week later she granted interviews to newspaper men informing them that she had written such a letter congratulating the boy for having the courage to stand up for what he thought was right (R. 126). The Appellate Court further points out that "She should have foreseen that the incident would provoke public indignation and that her letter, if publicized, as it was, would tend to undermine the morale of young men of military age in her classes and among the nation whom she was inviting and encouraging to violate the law" (R. 158).

The action taken by the Superintendent of Schools on February 28, 1942 in suspending petitioner pending the hearing of the charges and the findings of the Board after a full hearing, did not constitute war hysteria but was the result of careful deliberation to determine whether a teacher under their employ had made such statements in her classroom and had written such letter and if so whether she should be permitted to continue to teach in the public schools of Chicago. Neither was the Appellate Court moved by war hysteria. Neither was the Supreme Court of Illinois moved by war hysteria when it denied her petition for leave to appeal on September 12, 1945 (R. 161).

While it may be conceded that freedom of speech is nat-

ural and inherent it is not absolute but is subject to restrictions and limitations. This court stated in *Schenck* v. *United States*, 249 U. S. 47, 51-52:

> "It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in *Patterson* v. *Colorado*, 205 U. S. 454, 462, * * * We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. *Aikens* v. *Wisconsin*, 195 U. S. 194, 205, 206, * * *. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic. * * * The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right."

In *Gilbert* v. *Minnesota*, 254 U. S. 325, this Court upheld a Minnesota statute making it unlawful to discourage enlistment in the military or naval forces and held that one who made statements in public in violation of such state statute was not protected under the freedom of speech provisions of the United States constitution, and said (p. 333):

> "It would be a travesty on the constitutional privilege he invokes to assign him its protection."

For the reasons herein set forth, we respectfully submit

that the Supreme Court of the United States should decline to take jurisdiction.

Respectfully submitted,

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